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Washington, DC 20224

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### Legend

Foundation =

State =

Program =

Department =

Statute =

$$a =$$
**b** =

**C =**

$$d =$$

Dear

This letter responds to the Foundation's request for a ruling that it is eligible to receive tax-deductible charitable contributions under section 170(c)(1) of the Internal Revenue Code (Code).

## FACTS AND REPRESENTATIONS

The Foundation was established by the Statute as a public corporation for the purpose of soliciting, accepting, making, and disbursing contributions, and making

recommendations for the Program. The Program is a state-wide program established and implemented by the Department, in coordination with other State departments and agencies, for the promotion of tourism in the State. The Department is part of the executive branch of the government of the State. According to the Statute, the creation of the Foundation and the carrying out of its purposes are in all respects for the benefit of the people of the State and constitute a public and charitable purpose.

The Foundation is governed by an a member board (the “Board”) of which b members are designated by the Statute (the “Statutory Members”) and b members are appointed by the Governor of the State (appointed members). The Statutory Members are the head of the Department (who is the chairperson), the head of another State department, the executive directors of c governmental authorities established by the State, and a representative from each of the d state-wide organizations for the preservation of state heritage and promotion of tourism in the State. The terms of the Statutory Members expire with their term in their respective government offices. The appointed members may be removed by the Governor.

The Foundation is attached to the Department for administrative purposes. Members of the Department’s staff make payments on behalf of the Foundation and prepare the Foundation’s budget for approval by the Board. The Department and other State departments, authorities and organizations on whose behalf the Foundation and the Program operate contribute the majority of the Foundation’s operating funds from their own tourism related budgets. The Foundation’s current assets may be used only to support the Program and upon any dissolution of the Foundation, its assets will devolve in trust to the Department or its successor for use only for marketing to promote tourism in the State.

## **LAW AND ANALYSIS**

Section 170(a)(1) allows, subject to certain limitations, a deduction for charitable contributions as defined in § 170(c), payment of which is made within the taxable year.

Section 170(c)(1) includes in the definition of “charitable contribution” a contribution or gift made for exclusively public purposes to or for the use of a State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia.

Entities eligible to receive tax-deductible contributions include not only governmental units described in § 170(c)(1) but also wholly-owned instrumentalities of States or political subdivisions. See Rev. Rul. 75-359, 1975-2 C.B. 79; Rev. Rul. 79-323, 1979-2 C.B. 106.

Revenue Ruling 57-128, 1957-1 C.B. 311, sets forth the following factors to be taken into account in determining whether an entity is an instrumentality of one or more

governmental units: (1) Whether the organization is used for a governmental purpose and performs a governmental function; (2) whether performance of its function is on behalf of one or more states or political subdivisions; (3) whether there are any private interests involved, or whether the states or political subdivisions have the power and interests of an owner; (4) whether control and supervision of the organization is vested in a public authority or authorities; (5) whether express or implied statutory or other authority is necessary for the creation and/or use of the organization, and whether this authority exists; and (6) the degree of financial autonomy of the entity and the source of its operating expenses.

The Foundation was created by the Statute. The Foundation performs the governmental purpose of raising funds to support the various-tourism related activities of the Program. The Program and the Foundation were created for the purpose of increasing tourism within the State. The Foundation, in its support of the Program, acts on behalf of the State.

The State, primarily through the Department, controls and supervises the Foundation. The Chairman of the Board is the head of the Department. Half of the Board's members are appointed directly by the Governor, and the remaining Board members are heads of various State departments or authorities or members of state organizations. The staff of the Department perform the administrative duties of the Foundation, including preparing the budget and making payments on behalf of the Foundation. Moreover, the operating funds of the Foundation are provided primarily by the various State government departments, authorities and organizations on whose behalf the Foundation and the Program operate. All of Foundation's assets will be distributed for the State's benefit while Foundation is in existence and upon dissolution of Foundation.

Accordingly, we conclude that the Foundation is an instrumentality of State.

## **CONCLUSION**

We also conclude that Foundation, as an instrumentality of State, is eligible to receive charitable contributions that are deductible to contributors under section 170 of the Code, if all the requirements of that section are satisfied.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Timothy L. Jones  
Senior Counsel, Branch 5  
Financial Institutions & Products

cc: